

FILED

IN THE IOWA DISTRICT COURT FOR BLACK HAWK COUNTY AUG 13 AM 8:01

CLERK OF DISTRICT COURT  
BLACK HAWK COUNTY, IOWA

STATE OF IOWA ex rel.,  
THOMAS J. MILLER (99AG25112),  
ATTORNEY GENERAL OF IOWA,

Plaintiff,

vs.

JERRY L. FRATZKE, Individually  
and d/b/a/ PRONTO MARKET,

Defendants.

EQUITY NO. EQCV106329

PETITION IN EQUITY

COMES NOW the State of Iowa ex rel. Thomas J. Miller, Attorney General of Iowa, by  
Stephen E. Reno, Assistant Attorney General, pursuant to the Iowa Consumer Fraud Act, Iowa  
Code section 714.16, and for its claim against the defendants states:

#### PARTIES

1. Thomas J. Miller is the Attorney General of Iowa and brings this action on behalf  
of the State of Iowa, a sovereign state of the United States of America.

2. Defendant Jerry Fratzke ("Fratzke") resides at 12920 Dubuque Road, Jesup,  
Black Hawk County, Iowa, and is the owner of Defendant Pronto Market, with locations in  
Sumner, Iowa, and Fairbank, Iowa, as well as other sites within the State of Iowa.

3. Fratzke manages, controls and directs business policies, activities,  
operations, acts, and financial transactions of Pronto Market, directly and/or indirectly through  
agents and employees.

## **JURISDICTION AND VENUE**

4. Iowa Code section 714.16(7) authorizes the Attorney General of Iowa to commence equitable proceedings against any person who has engaged in, is engaging in, or is about to engage in any unfair, deceptive, fraudulent or other practice declared to be unlawful by Iowa Code section 714.16. The Attorney General may seek a temporary restraining order, preliminary injunction, permanent injunction, consumer reimbursement or civil penalties not to exceed Forty Thousand Dollars (\$40,000.00) per violation. In addition, the Attorney General is entitled to recover court costs, investigation costs, and reasonable attorneys' fees pursuant to Iowa Code section 714.16(11).

5. Venue for this action lies in Black Hawk County, Iowa, the residence and principal place of business of Fratzke, pursuant to Iowa Code section 714.16(10).

## **FACTS**

6. Fratzke, individually and doing business as Pronto Market, operates convenience stores located at 117 W. First Street, Sumner, Iowa, and 104 Fourth Street, Fairbank, Iowa, as well as other Pronto Market locations in Iowa.

7. At the Sumner and Fairbank, Iowa locations, Fratzke individually, and d/b/a Pronto Market, engages in sales of regular unleaded and ten percent (10%) ethanol-enhanced, higher octane gasolines and other products to Iowa consumers as well as residents of other states.

## **ALLEGATIONS**

8. Plaintiff realleges the allegations of paragraphs one (1) through seven (7).

9. On or about June 17, 2008, Ivan Hankins ("Hankins"), Bureau Chief of the Weights and Measures Bureau ("Bureau") of the Iowa Department of Agriculture and Land Stewardship ("IDALS"), was informed that documentation obtained by Bureau Inspector Lisa Kurt indicated the Fairbank and Sumner Pronto Markets were receiving shipments of E85 and E75 blended ethanol fuel from bulk fuel distributor Consolidated Energy Company of Jesup, Iowa, and that those shipments were being dumped into the underground storage tanks located at Fairbank and Sumner Pronto Markets, including the underground storage tank(s) that served unleaded regular gasoline pumps. Copies of five (5) Consolidated Energy Company Invoices ("invoices") addressed to the Pronto Market at Fairbank and three (3) invoices addressed to the Pronto Market at Sumner dated from March 10, 2008, through June 6, 2008, each indicating the delivery and dumping of E85 blended ethanol fuel and E75 blended ethanol fuel into the Fairbank and Sumner Pronto Markets' underground storage tanks, are attached hereto and marked as "Exhibit A".

10. On June 17, 2008, Bureau Inspector Kurt took samples from each of the underground storage tanks located at the Fairbank and Sumner Pronto Markets.

11. Those samples, subsequently tested by Magellan Midstream Partners, L.P. ("Magellan") of Kansas City, Missouri, indicated E85 and E75 blended ethanol fuel to be present in Fairbank and Sumner Pronto Market underground storage tanks. Four (4) Laboratory Analysis Reports prepared by Magellan and showing the presence of E85 and E75 blended ethanol fuel in the underground storage tanks at both the Fairbank and Sumner Pronto Markets

are attached hereto and marked as "Exhibit B".

12. At no time has either the Fairbank or the Sumner Pronto Market had a fuel pump dedicated exclusively to E85 blended ethanol fuel, a product that requires special vehicle engine modifications before it can be used properly and which can damage vehicle engines that have not been so modified.

13. The Bureau's Invoice and Magellan Laboratory Analysis Report reviews show that since March 10, 2008, the Fairbank and Sumner Pronto Markets owned by Fratzke have purchased in excess of two thousand five hundred (2,500) gallons of E85 and E75 blended ethanol fuel, which was then improperly and fraudulently sold as either unleaded regular gasoline or ten percent (10%) ethanol enhanced fuel.

#### REQUEST FOR INJUNCTIVE AND OTHER RELIEF

14. Pursuant to Iowa R. of Civ. P. 9, no bond is required of the State of Iowa in seeking injunctive relief.

15. The State of Iowa has not previously presented a petition for a temporary injunction, restraining order or other injunctive relief to, nor has a petition been denied by any Judge of the Iowa District Court.

16. It is in the public interest that immediate injunctive relief be entered to prevent the unlawful practices described herein and to minimize the losses and damages that will result if the defendants continue the practices as described during pendency of this action. Unless injunctive relief by way of a temporary restraining order is forthcoming, additional consumers will suffer unnecessary loss.

**WHEREFORE, plaintiff prays the Court:**

**A. Enter an immediate temporary restraining order pursuant to Iowa Code section 714.16(7) requiring all Defendants and their officers, directors, employees, agents, successors, assigns, and all other persons, individually and in any business or corporate capacity, acting in concert with or participating with the Defendants, who have actual or constructive notice of the Court's injunction, by personal service or otherwise, to cease and desist from further sales of all E85 and E75 blended ethanol fuel;**

**B. Upon notice and hearing as the Court deems appropriate, enter a preliminary injunction pursuant to Iowa Code section 714.16(7), requiring all Defendants and their officers, directors, employees, agents, successors, assigns, and all other persons, individually and in any business or corporate capacity, acting in concert with or participating with the defendants, who have actual or constructive notice of the Court's injunction, by personal service or otherwise, to cease and desist from further sales of all E85 and E75 blended ethanol fuel;**

**C. After a hearing on the merits, enter a permanent injunction pursuant to Iowa Code section 714.16(7) to enjoin the Defendants and their officers, directors, employees, agents, successors, assigns, and all other persons, individually and in any business or corporate capacity, acting in concert with or participating with the Defendants, who have actual or constructive notice of the Court's injunction, by personal service or otherwise, from engaging in the unfair and deceptive practices set forth herein and which violate Iowa Code section 714.16, and barring the Defendants and their officers, directors, employees, agents, successors, assigns, other related business entities, and all other persons acting in concert or participating with the Defendants from**

making unfair and deceptive statements, misrepresentations, or promises to consumers associated with sales of all E85 and E75 blended ethanol fuel;

D. Award monetary reimbursement to consumers who have purchased who can account for and show that they purchased what they believed to be unleaded regular gasoline or ten percent (10%) ethanol enhanced fuel from Fratzke's Fairbank and Sumner Pronto Market locations and such administrative costs as are necessary to implement restitution relief pursuant to Iowa Code section 714.16(7);

E. Require that in the event the Defendants should be permitted to sell E85 and/or E75 blended ethanol fuel at any of its facilities in the future, a designated underground storage tank and fuel pump shall be installed at such sites;

F. Assess additional civil penalties, where applicable, pursuant to Iowa Code section 714.16A;

G. Award plaintiff its investigative costs and attorneys' fees pursuant to Iowa Code section 714.16(11);

H. Assess civil penalties pursuant to Iowa Code section 714.16(7) in an amount not to exceed Forty Thousand Dollars (\$40,000.00) per violation, per defendant;

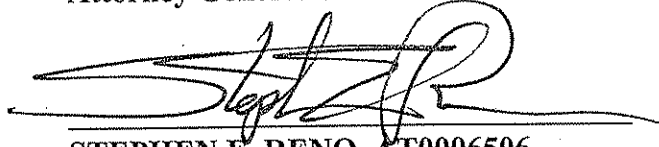
I. Award plaintiff interest as allowed by law;

J. Pursuant to Iowa Code section 714.16(7), assess the costs of this action against the Defendants; and

K. Enter such other equitable relief as the Court believes fair and appropriate.

Respectfully submitted,

THOMAS J. MILLER  
Attorney General of Iowa

A handwritten signature in black ink, appearing to read "Stephen E. Reno", written over a horizontal line.

STEPHEN E. RENO, AT0006506  
Assistant Attorney General  
Iowa Attorney General's Office  
Lucas Building, Ground Floor  
321 E. 12<sup>th</sup> Street, Room 018  
Des Moines, IA 50319  
Phone: (515) 281-5351  
Fax: (515) 242-6072  
ATTORNEY FOR PLAINTIFF

RA20\PRONTO MARKET Petition in Equity

FAX PAGE: 1 OF 1



# INVOICE

167307

Date 4/23/2008

PRONTO FAIRBANK MARKET  
BOX 365

131550

FAIRBANK, IA

PAGE 1

PO: 424901

FAIRBANK, IA 50629

Bill of Lading No.		Date Shipped	Shipped Via	Terms	Salesman	Our Order No.		
BELOW		4/22/08	FROST #10	NET 10 DAYS	11	167307		
Fed. Tax	St. Tax	DESCRIPTION			Qty. Shp'd	Unit Price	Amount	
.133	.19	GASAHOL (SB) -DEALER			BL# 424901	2580	8.33439	8602.73#5
.133	.19	GASAHOL E75 BLEND			BL# 424901	221	3.00795	664.76
.244	.225	#2 ULTRA LS CLR			BL# 301912	1200	4.07432	4889.18
		SPLIT LOAD CHARGE			BL# 424901	1	17.50	17.50
		EPC CHARGE			BL# 424901	4001	.01	40.01
		GAS CORRECTIONS				221	.1793	-39.63
		FEDERAL ETH TAX CREDIT						
		SUBTOTAL						14174.55
		1780940 PAYMENT DUE 5/02/2008 TOTAL						14174.55

5 A-C. This product does not meet the requirements for reformulated gasoline and may not be used in any reformulated gasoline area.





DELIVER TO: JACK RECHKEMMER

FROM: BILLING

FAX PAGE: 1 OF 1

**CE**  
**CONSOLIDATED**  
**ENERGY COMPANY**  
 Box 317 Jesup, Iowa 50648

**INVOICE**

167636

Date 5/09/2008

PRONTO FAIRBANK MARKET  
BOX 365

131550

FAIRBANK, IA

PAGE 1

FAIRBANK, IA 50629

PO: 426490

Bill of Lading No.		Date Shipped	Shipped Via	Terms	Salesman	Our Order No.	
BELOW		5/08/08	FROST #10	NET 10 DAYS	11	167636	
Fed. Tax	St. Tax	DESCRIPTION			Qty. Shp'd	Unit Price	Amount
.133	.19	GASAHOL E85 BLEND	BL#	426489	140	3.06695	429.37
.133	.19	GASAHOL (SB)-DEALER	BL#	426489	1859	3.49139	6490.49#5
		SPLIT LOAD CHARGE	BL#	426490	1	17.50	17.50
		EPC CHARGE	BL#	426490	3000	.01	30.00
		GAS CORRECTIONS			140	.2282	-31.95
		FEDERAL (ETH) TAX CREDIT					
				SUBTOTAL			11147.03
		1790848	PAYMENT DUE	5/18/2008	TOTAL		11147.03

5 A-C. This product does not meet the requirements for reformulated gasoline and may not be used in any reformulated gasoline area.



FAX PAGE: 1 OF 1

**CE**  
**CONSOLIDATED**  
**ENERGY COMPANY**  
Box 317      Jesup, Iowa 50648

# INVOICE

167731

Date 5/14/2008

PRONTO FAIRBANK MARKET  
BOX 365

131550

FAIRBANK, IA

PAGE 1

PD: 427031

Bill of Lading No.		Date Shipped	Shipped Via	Terms	Salesman	Our Order No.	
BELOW		5/13/08	FROST #14	NET 10 DAYS	11	167731	
Fed. Tax	St. Tax	DESCRIPTION			Qty. Shp'd	Unit Price	Amount
.133	.19	GASAHOL E85 BLEND			190	3.06895	583.10
.133	.19	GASAHOL (SB)-DEALER			2810	3.55339	9985.03#5
		SPLIT LOAD CHARGE			1	17.50	17.50
		EPC CHARGE			4000	.01	40.00
.244	.225	#2 ULTRA LS CLR			1080	4.27887	4278.87
		GAS CORRECTIONS			190	<del>2.287</del>	-43.36
		FEDERAL (ETH) TAX CREDIT					
		SUBTOTAL					14860.94
		1793270 PAYMENT DUE 5/23/2008 TOTAL					14860.94

5-A-C. This product does not meet the requirements for reformulated gasoline and may not be used in any reformulated gasoline area.



DELIVER TO: JACK RECHKEMMER

FROM: BILLING

FAX PAGE: 1 OF 4

**CE**  
**CONSOLIDATED**  
**ENERGY COMPANY**  
 Box 317 Jesup, Iowa 50648

**INVOICE**

167891

Date 5/27/2008

 PRONTO FAIRBANK MARKET  
 BOX 365

131550

FAIRBANK, IA

PAGE 1

FAIRBANK, IA 50629

PO: 427976

Bill of Lading No.		Date Shipped	Shipped Via	Terms	Salesman	Our Order No.	
BELOW		5/20/08	FROST #14	NET 10 DAYS	11	167891	
Fed. Tax	St. Tax	DESCRIPTION			Qty. Shp'd	Unit Price	Amount
.133	.19	GASAHOL E85 BLEND			110	3.0622	336.84
.133	.19	GASAHOL (SB)-DEALER			1389	3.6129	5018.32#5
		SPLIT LOAD CHARGE			1	17.50	17.50
		EPC CHARGE			1499	.01	14.99
		GAS CORRECTIONS			110	.2282	-25.10
			SUBTOTAL				5362.55
			1799179 PAYMENT DUE 5/30/2008 TOTAL				5362.55

5 A-C. This product does not meet the requirements for reformulated gasoline and may not be used in any reformulated gasoline area.



DELIVER TO: JACK RECHKEMMER

FROM: BILLING

FAX PAGE: 1 OF 1

**CE**  
**CONSOLIDATED**  
**ENERGY COMPANY**  
 Box 317 Jesup, Iowa 50648

**INVOICE**

168161

Date 6/06/2008

PRONTO FAIRBANK MARKET  
BOX 365

131550

FAIRBANK, IA

PAGE 1

FAIRBANK, IA 50629

PO: 429536

Bill of Lading No.		Date Shipped	Shipped Via	Terms		Salesman	Our Order No.
BELOW		6/05/08	FROST #10	NET 10 DAYS		11	168161
Fed. Tax	St. Tax	DESCRIPTION			Qty. Shp'd	Unit Price	Amount
.133	.19	GASAHOL (SB) - DEALER	BL#	429536	6354	3.50564	22274.84#5
.133	.19	GASAHOL E85 BLEND	BL#	429536	450	3.0579	1376.06
.244	.225	#2 ULTRA LS CLR	BL#	429535	1201	4.21354	5060.46
		EPC CHARGE	BL#	429535	8005	.01	80.05
		GAS CORRECTIONS			450	.2282	-102.69
		FEDERAL (ETH) TAX CREDIT					
				SUBTOTAL			28688.72
		1805063 PAYMENT DUE 6/15/2008 TOTAL					28688.72

5 A-C. This product does not meet the requirements for reformulated gasoline and may not be used in any reformulated gasoline area.



**DE**  
**CONSOLIDATED**  
**ENERGY COMPANY**  
 Box 317 Jesup, Iowa 50648

**INVOICE**

**Nº 166439**

Date **3/10/2008**

**SUMNER, IA**

132100

PAGE 1

PO:420889

**PRONTO SUMNER MARKET**  
**117 W. 1ST STREET**

**SUMNER, IA 50674**

Bill of Lading No.		Date Shipped	Shipped Via	Terms	Salesman	Our Order No.	
BELOW		3/07/08	FROST #11	1% 10 NET 11	11	166439	
Fed. Tax	St. Tax	DESCRIPTION			Qty. Shp'd	Unit Price	Amount
1.83	1.19	GASAHOL (SB)-DEALER			7598	3.01624	22909.79
1.83	1.19	GASAHOL E85 BLEND			899	2.61686	2352.56
		BPD CHARGE			8497	.01	84.97
		BPD CHARGE			899	.1793	-161.19
		GAS CORRECTIONS					
		FEDERAL ETH TAX CREDIT					
		SUBTOTAL					25186.13
		TOTAL					25186.13
		YOU MAY DEDUCT 252.63					
		IF PAID 3/17/2008					
		1757600					
		PAID 3-14-08					
		4/26/1					

5 A-C. This product does not meet the requirements for reformulated gasoline and may not be used in any reformulated gasoline area.



**CE**  
**CONSOLIDATED**  
**ENERGY COMPANY**  
 Box 317      Jesup, Iowa 50648

**INVOICE**

**Nº 166542**

Date 3/15/2008

PRONTO SUMNER MARKET  
 117 W. 1ST STREET

132100

SUMNER, IA

PAGE 1

SUMNER, IA 50674

PO:421322

Bill of Lading No.	Date Shipped	Shipped Via	Terms	Salesman	Our Order No.	
BELOW	3/12/08	FROST #11	1% 10 NET 11	11	166542	
Fed. Tax	St. Tax	DESCRIPTION	Qty. Shp'd	Unit Price	Amount	
.133	.19	GASAHOL (98)-DEALER	BL# 421322	3300	3.09976	10229.21
.133	.19	GASAHOL E75 BLEND	BL# 421325	200	2.72165	544.33
		SPLIT LOAD CHARGE	BL# 421322	1	12.50	12.50
		EPC CHARGE	BL# 421322	3500	.01	35.00
		GAS CORRECTIONS		200	.1793	-35.86
		FEDERAL ETH TAX CREDIT				
		YOU MAY DEDUCT 107.73	SUBTOTAL			10785.18
		IF PAID 3/22/2008	TOTAL			10785.18
		4760500				-107.73
						10677.45

pd  
3-20-08  
41275

A-C. This product does not meet the requirements for reformulated gasoline and may not be used in any reformulated gasoline area.



**CE**  
**CONSOLIDATED**  
**ENERGY COMPANY**  
 Box 317      Jesup, Iowa 50648

**INVOICE**

**Nº 166778**

Date 3/27/2008

PRONTO SUMNER MARKET  
 117 W. 1ST STREET

132100

SUMNER, IA

PAGE 1

SUMNER, IA 50674

PO:422755

*pd  
4-3-08  
40083*

Bill of Lading No.		Date Shipped	Shipped Via	Terms		Salesman	Our Order No.	
BELOW		3/26/08	FROST #14	1% 10 NET 11		11	166778	
Fed. Tax	St. Tax	DESCRIPTION				Qty. Shp'd	Unit Price	Amount
.133	.19	GASAHOL (SB)-DEALER		BL#	422755	4444	3.12286	13877.99
.133	.19	GASAHOL E85 BLEND		BL#	422755	306	2.92938	896.39
		SPLIT LOAD CHARGE		BL#	422755	1	12.50	12.50
		GAS CORRECTIONS		BL#	422755	306	.2282	69.83
		EPO CHARGE		BL#	422755	4750	.01	47.50
YOU MAY DEDUCT 147.74				SUBTOTAL				14904.21
... IF PAID 4/05/2008				TOTAL				14904.21
1766363								-147.74
								14756.47

*pd  
4-3-08  
40083*

5 A-C. This product does not meet the requirements for reformulated gasoline and may not be used in any reformulated gasoline area.



## Laboratory Analysis Report

Date Printed: 6/27/2008

Report To: Mike Harrington  
Weights and Measures Bureau, IDALS  
2230 South Ankeny Blvd  
Iowa Laboratory Facility  
Ankeny IA 50023-9093

Submitted By: Darryl Brown  
Iowa Dept of Agri&Land Steward  
2230 S. Ankeny Blvd  
Ankeny IA 50023

cc:

Sample ID: KS08061326      Type of Sample: Gasohol  
Sample Date: 06/17/2008      Sample Point: Pump 1  
Sample Description: #2 Unleaded gas Pronto Fairbanks  
Sample Notes:

Method	Results
--------	---------

D 4815 - Oxygenates

<0.05 vol. % Methanol

18.43 vol. % Ethanol

<0.05 vol. % Isopropanol

<0.05 vol. % t-Butanol

<0.05 vol. % n-Propanol

<0.05 vol. % MTBE

<0.05 vol. % s-Butanol

<0.06 vol. % DIPE

<0.05 vol. % Isobutanol

<0.05 vol. % ETBE

<0.05 vol. % t-Pentanol

<0.05 vol. % n-Butanol

<0.05 vol. % TAME

6.81 mass % total Oxygen

D 2699 - Research Octane Number

96.8

D 2700 - Motor Octane Number

86.0

(R+M)/2 - Average Octane Number

91.4

<0.05 mass % Methanol

19.58 mass % Ethanol

<0.05 mass % Isopropanol

<0.05 mass % t-Butanol

<0.05 mass % n-Propanol

<0.05 mass % MTBE

<0.05 mass % s-Butanol

<0.06 mass % DIPE

<0.05 mass % Isobutanol

<0.05 mass % ETBE

<0.05 mass % t-Pentanol

<0.05 mass % n-Butanol

<0.05 mass % TAME



6/27/2008

913-647-8500

1090-A Sunshine Road, Kansas City, KS 66115

Page 1 of 1

KS08061326





## Laboratory Analysis Report

Date Printed: 6/27/2008

Report To: Mike Harrington  
Weights and Measures Bureau, IDALS  
2230 South Ankeny Blvd  
Iowa Laboratory Facility  
Ankeny IA 50023-9093

Submitted By: Darryl Brown  
Iowa Dept of Agri&Land Steward  
2230 S. Ankeny Blvd  
Ankeny IA 50023

cc:

Sample ID: KS08061332      Type of Sample: Gasohol  
Sample Date: 06/17/2008      Sample Point: pump 1  
Sample Description: 3 Gasohol Pronto-Fairbanks  
Sample Notes:

Method	Results
--------	---------

D 4815 - Oxygenates

<0.05 vol. % Methanol  
14.83 vol. % Ethanol  
<0.05 vol. % Isopropanol  
<0.05 vol. % t-Butanol  
<0.05 vol. % n-Propanol  
<0.05 vol. % MTBE  
<0.05 vol. % s-Butanol  
<0.06 vol. % DIPE  
<0.05 vol. % Isobutanol  
<0.05 vol. % ETBE  
<0.05 vol. % t-Pentanol  
<0.05 vol. % n-Butanol  
<0.05 vol. % TAME

<0.05 mass % Methanol  
15.83 mass % Ethanol  
<0.05 mass % Isopropanol  
<0.05 mass % t-Butanol  
<0.05 mass % n-Propanol  
<0.05 mass % MTBE  
<0.05 mass % s-Butanol  
<0.06 mass % DIPE  
<0.05 mass % Isobutanol  
<0.05 mass % ETBE  
<0.05 mass % t-Pentanol  
<0.05 mass % n-Butanol  
<0.05 mass % TAME

5.50 mass % total Oxygen

D 2699 - Research Octane Number


95.1

D 2700 - Motor Octane Number

85.2

(R+M)/2 - Average Octane Number

90.2



6/27/2008

913-647-8500

1090-A Sunshine Road, Kansas City, KS 66115

Page 1 of 1  
KS08061332



## Laboratory Analysis Report

Date Printed: 6/27/2008

Report To: Mike Harrington  
Weights and Measures Bureau, IDALS  
2230 South Ankeny Blvd  
Iowa Laboratory Facility  
Ankeny IA 50023-9093

Submitted By: Darryl Brown  
Iowa Dept of Agri&Land Steward  
2230 S. Ankeny Blvd  
Ankeny IA 50023

cc:

Sample ID: KS08061325      Type of Sample: Gasohol  
Sample Date: 06/18/2008      Sample Point: Pump 2  
Sample Description: Gasohol Pronto-Summer 6  
Sample Notes:

Method	Results
--------	---------

D 4815 - Oxygenates

<0.05 vol. % Methanol  
12.94 vol. % Ethanol  
<0.05 vol. % Isopropanol  
<0.05 vol. % t-Butanol  
<0.05 vol. % n-Propanol  
<0.05 vol. % MTBE  
<0.05 vol. % s-Butanol  
<0.06 vol. % DIPE  
<0.05 vol. % Isobutanol  
<0.05 vol. % ETBE  
<0.05 vol. % t-Pentanol  
<0.05 vol. % n-Butanol  
<0.05 vol. % TAME

<0.05 mass % Methanol  
13.82 mass % Ethanol  
<0.05 mass % Isopropanol  
<0.05 mass % t-Butanol  
<0.05 mass % n-Propanol  
<0.05 mass % MTBE  
<0.05 mass % s-Butanol  
<0.06 mass % DIPE  
<0.05 mass % Isobutanol  
<0.05 mass % ETBE  
<0.05 mass % t-Pentanol  
<0.05 mass % n-Butanol  
<0.05 mass % TAME

4.81 mass % total Oxygen

D 2699 - Research Octane Number  
95.2

D 2700 - Motor Octane Number  
85.2

(R+M)/2 - Average Octane Number  
90.2



6/27/2008

913-647-8500

1090-A Sunshine Road, Kansas City, KS 66115

Page 1 of 1

KS08061325



## Laboratory Analysis Report

Date Printed: 6/27/2008

Report To: Mike Harrington  
Weights and Measures Bureau, IDALS  
2230 South Ankeny Blvd  
Iowa Laboratory Facility  
Ankeny IA 50023-9093

Submitted By: Darryl Brown  
Iowa Dept of Agri&Land Steward  
2230 S. Ankeny Blvd  
Ankeny IA 50023

cc:

Sample ID: KS08061328      Type of Sample: Gasohol  
Sample Date: 06/18/2008      Sample Point: Pump 1  
Sample Description: 5 Unleaded Gas Pronto-Summer  
Sample Notes:

Method	Results
--------	---------

**D 4815 - Oxygenates**

<0.05 vol. % Methanol  
0.22 vol. % Ethanol  
<0.05 vol. % Isopropanol  
<0.05 vol. % t-Butanol  
<0.05 vol. % n-Propanol  
<0.05 vol. % MTBE  
<0.05 vol. % s-Butanol  
<0.06 vol. % DIPE  
<0.05 vol. % Isobutanol  
<0.05 vol. % ETBE  
<0.05 vol. % t-Pentanol  
<0.05 vol. % n-Butanol  
<0.05 vol. % TAME  
0.08 mass % total Oxygen

<0.05 mass % Methanol  
0.24 mass % Ethanol  
<0.05 mass % Isopropanol  
<0.05 mass % t-Butanol  
<0.05 mass % n-Propanol  
<0.05 mass % MTBE  
<0.05 mass % s-Butanol  
<0.06 mass % DIPE  
<0.05 mass % Isobutanol  
<0.05 mass % ETBE  
<0.05 mass % t-Pentanol  
<0.05 mass % n-Butanol  
<0.05 mass % TAME

D 2699 - Research Octane Number  
90.7

D 2700 - Motor Octane Number  
83.8

(R+M)/2 - Average Octane Number  
87.3



6/27/2008

913-647-8500

1090-A Sunshine Road, Kansas City, KS 66115



FILED

IN THE IOWA DISTRICT COURT FOR BLACK HAWK COUNTY

08 AUG 13 AM 8:10

THE STATE OF IOWA ex rel.  
THOMAS J. MILLER, 99AG45000  
ATTORNEY GENERAL OF IOWA,

Plaintiff,

v.

JERRY L. FRATZKE, individually  
and d/b/a PRONTO MARKET

Defendants.

EQUITY NO. EQCV106329

AFFIDAVIT

I, Lisa A. Kurt, being duly sworn, state that:

1. On or about June 17, 2008, while performing my assigned duties as a weights and measures inspector for the Iowa Department of Agriculture and Land Stewardship, I discovered eight (8) invoices for E85, E75 and other blended ethanol fuels delivered by Consolidated Energy Company to the Fairbank and Sumner Pronto Markets owned by Jerry L. Fratzke.
2. Neither the Fairbank nor the Sumner Pronto Market had fuel pumps specifically designated for fuels containing ethanol blended fuel of greater than ten percent (10%).
3. I took fuel samples from the underground storage tanks located at the Fairbank and Sumner, Iowa, Pronto Market convenience stores to determine the ethanol content and am credibly informed that ethanol levels exceeded ten percent (10%).
4. It is my understanding that ethanol levels exceeding ten percent (10%) may damage motors in vehicles not specifically modified to handle higher ethanol levels.

Dated this 30<sup>TH</sup> day of JULY, 2008.

Lisa A. Kurt

Lisa A. Kurt  
Weights and Measures Inspector  
Iowa Department of Agriculture  
and Land Stewardship

On this 30<sup>TH</sup> day of JULY, 2008, Lisa A. Kurt, personally  
known to me, executed this Affidavit as his voluntary act and deed.

[Signature]

Notary Public for the State of Iowa



IN THE IOWA DISTRICT COURT FOR BLACK HAWK COUNTY

FILED

08 AUG 13 AM 8:37

STATE OF IOWA ex rel.  
THOMAS J. MILLER, 99AG25112  
ATTORNEY GENERAL OF IOWA,

Plaintiff,

vs.

JERRY L. FRATZKE, Individually  
and d/b/a PRONTO MARKET,

Defendants.

EQUITY NO. EQCV106329

ORDER GRANTING TEMPORARY  
INJUNCTIVE RELIEF

Now on this 13 day of Aug, 2008 the Court having reviewed the State's Petition with request for a temporary restraining order, preliminary injunction and permanent injunction and the Affidavit of Lisa Kurt, weights and measures inspector for the Iowa Department of Agriculture and Land Stewardship, attached thereto, and, having heard statements of counsel and being otherwise advised in the premises, FINDS that the State's request for a temporary restraining order should be granted prior to hearing.

The Court further FINDS that hearing on the Petition should be immediately set to give the defendants the opportunity to move the Court to dissolve the temporary restraining order entered.

1. The Court specifically FINDS that defendants made the following misleading claims, assertions and misrepresentations:

a) Vehicle fuels being sold at the Fairbank and Sumner Pronto Markets as unleaded regular fuel with no ethanol enhancement and ten percent (10%) ethanol enhanced fuel, in fact, contained levels of blended ethanol fuel in excess of ten percent (10%) ethanol.

b) Consumers received no notification that E85 and E75 blended ethanol fuel was being mixed with unleaded regular fuel, that should have no ethanol enhancement, and/or ten percent (10%) ethanol enhanced fuel.

2. The Court also FINDS that defendants have specifically omitted and otherwise failed to inform purchasers of their motor vehicle fuel products that said products were being sold in a manner other than advertised.

IT IS THEREFORE ORDERED that a hearing on the State's request for injunctive relief shall be held on the 22 day of SEPT 2008, at 11:00 a. m. at the Black Hawk County Courthouse, 316 E. 5<sup>th</sup> Street, Waterloo, Iowa. Defendants shall be given 15 days notice prior to hearing.

IT IS FURTHER ORDERED that until such time as the Court may modify or terminate the temporary restraining order herein granted by written order, said Order shall remain in full force and effect.

IT IS SO ORDERED this 13 day of AUG, 2008.

13/ Judge Fister  
JUDGE, First District Court  
JON C. FISTER

Copies to:

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